



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examinations

625 Fulton Street, Room 503

Brooklyn, NY 11201

501.03-00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

February 2, 2010

Release Number: **201021033**

Release Date: 5/28/10

LEGEND

ORG = Organization name

Xx = date Address = address

ORG

ADDRESS

Taxpayer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

**LAST DATE FOR FILING A PLEADING
WITH THE TAX COURT, THE CLAIMS,
COURT, OR THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA: May 3, 20XX**

CERTIFIED MAIL

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Your claim as an organization exempt under section 501(c)(3) is hereby revoked and you are not exempt under section 501(a) of the Code effective May 21, 20XX.

The revocation of your exempt status was made for the following reason(s):

You are not operating exclusively for any religious purpose, charitable purpose, educational purpose, or any other exempt purpose. Our examination reveals that you are not engaged primarily in activities which accomplish religious, charitable, educational or other exempt purposes as required by Treas. Reg. 1.501(c)(3)-1(c)(1). Your activities, including your financial transactions, more than insubstantially furthered non-exempt purposes. Moreover, you failed to establish that you were not operated for the benefit of private interest of your president/secretary/director and private shareholders or individuals, as required for continued recognition of exemption pursuant to Treas. Reg. 1.501(c)(3)-1(d)(1)(ii). Your income inured to the benefit of private shareholders and individuals.

Contributions to your organization are no longer deductible under IRC §170. Any contributions to your organization by those who were in part responsible for, or were aware of, the activities or deficiencies on the part of your organization that gave rise to

loss of exempt status will not be allowed as a deduction effective May 21, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to these courts at the following addresses:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

We will notify the appropriate State Officials of this action, as required by Code section 6104(c). You should contact your State officials if you have any questions about how this final determination may affect your State responsibilities and requirements.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Acting Director, EO Examinations

Enclosure:
Publication 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
8701 S. Gessner, M/S 4900HAL
Houston, TX 77074-2926

August 2, 2010

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Vicki L. Hansen
Acting Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 1 of 13
Name of taxpayer ORG	Tax Identification Number		Year/Period ended 12/31/XX & 12/31/XX

LEGEND

ORG = Organization name XX = date Address = address City = city State = state
 POA = POA ATTN = attorney CPA = CPA Manager = manager Agent = agent
 EMP-1 = 1st employee DIR-1, DIR-2, DIR-3, DIR-4 & DIR-5 = 1st, 2nd, 3rd, 4th & 5th DIRECTORS
 CO-1 THRU CO-15 = 1st THRU 15th COMPANIES IND-1 THRU IND-10 = 1st THRU 10th IND

ISSUES:

ORG does not qualify as an integrated auxiliary under Internal Revenue Code Section 501(a)

ORG, City, State failed to operate as an organization exempt under Section 501(c)(3) of the Internal Revenue Code

Loans made to the for-profit and other related entities owned by the President/Director DIR-1 constitute private benefit/inurement

FACTS:

ORG, City, State (herein referred to as "ORG") was initially incorporated on May 21, 20XX as a non-profit corporation under the Non-Profit Corporation Laws of State. This organization was incorporated under the name "ORG". Article IV of the initial Articles of Incorporation stated in part:

"Said corporation is organized exclusively for charitable, religious, educational and scientific purposes including for such purposes, the making of distributions to organizations that qualify as ¹exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code".

"No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its members, trustees, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III hereof."

"Notwithstanding any other provision of these articles the corporation shall not carry on any other activities not permitted to be earned on (a) by a corporation exempt from federal Income tax under section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code or (b) a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code."

Article IV of the initial Articles of Incorporation stated:

"Upon dissolution of the corporation assets shall be distributed for one or more exempt

¹ Article III stated, "The period of duration is perpetual".

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 2 of 13
Name of taxpayer ORG	Tax Identification Number		Year/Period ended 12/31/XX & 12/31/XX

purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations as said court shall determine, are organized and operated exclusively for such purpose."

Articles of Amendment were filed with the Office of the Secretary of State of State on November 26, 20XX for the purpose of changing the name of the corporation from "ORG" to "ORG, City, State."

The trustees/directors of ORG included DIR-1, DIR-2 (spouse of DIR-1), DIR-3 (mother of DIR-1) and DIR-4 (brother-in-law of DIR-1 and DIR-2). In addition to serving as a director/trustee, DIR-1 was elected the president and secretary per the minutes of ORG's organizational meeting held on May 23, 20XX. DIR-1 signed documents as president or as secretary of ORG.

ORG did not file Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, to apply for recognition of exempt status under Internal Revenue Code Section 501(a). ORG did not file Form 990, Return of Organization Exempt From Income Tax, for any period since inception.

Small Business/Self-Employed Examination (herein referred to as SB/SE) examined the Form 1040 Individual Income Tax Return, Form 1120 Corporate Tax Return, and Form 1120S Income Tax Return for an S Corporation returns for DIR-1 and his related corporations. During the course of their examination, substantial deductions for charitable contributions were reflected on the Form 1040s and Form 1120s. In questioning the claimed contributions, SB/SE determined all payments claimed as charitable deductions were made to ORG. SB/SE was informed by the power of attorney on their case, CPA, CPA, that ORG was an integrated auxiliary of the CO-1 (CO-1) and as an integrated auxiliary the entity, ORG, did not have a filing requirement. SB/SE was further informed by the bookkeeper/tax preparer, EMP-1, that ORG was an organization established and controlled by DIR-1.²

To verify the affiliation/association, a third party contact was made to CO-1 by the SB/SE revenue agent. Trustee IND-1 in a letter dated June 20, 20XX responded on behalf of CO-1 as follow: *"I want to inform you that this organization is not affiliated with CO-2. I am unaware who operates this organization or the purpose of this foundation. It is not an auxiliary of CO-2."*

In approximately January 20XX SB/SE requested a collateral examination of ORG be conducted by Tax Exempt/Government Entities Exempt Organization (herein referred to as TE/GE:EO). An examination was conducted of the books and records for ORG for the periods ending December 31, 20XX and December 31, 20XX by TE/GE:EO.

² CPA, CPA and EMP-1 are discussed later in the report.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 3 of 13
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/XX & 12/31/XX	

Opening interview for the examination was held on April 18, 20XX. Present for the initial interview was DIR-1; his power of attorney, CPA, CPA; EMP-1, bookkeeper for ORG and for DIR-1' other business entities; Manager TE/GE:EO Group and Revenue Agent/Forensic Investigator.

During the interview, DIR-5 stated ORG was an integrated auxiliary by sharing the same beliefs as CO-1 and by virtue of including the name "an integrated auxiliary of CO-2, City, State" in the name of the organization. DIR-5 stated Treasury Decision (TD) 8640 which was issued on December 15, 19XX "decision loosen up the requirements" on what was necessary to qualify to be an integrated auxiliary. He further stated TD 8640 made it clear the "internal support rule does not apply". (See attached EXHIBIT A, Treasury Decision 8640)

Information Document Request (IDR) #008 was issued to request specific details on what affiliation ORG had with the CO-1; specific court cases and research to support ORG's position that it was an integrated auxiliary; a statement to address why the Articles of Amendment did not mention any activities relating to being an integrated auxiliary of CO-1; and a statement to explain how ORG became involved with the concept of being an integrated auxiliary. The response from POA DIR-5 was incomplete, did not address all issues, and stated the following:

"Based on your request, I am submitting a statement regarding ORG and Treasury Decision 8640, issued December 15, 19XX. Treasury Decision was issued to incorporate the Rules of Rev. Proc. 86-23 regarding the definition of integrated auxiliary of churches regarding the organizations financial support and nature of the organizations activities. The regulations of Section 1.6033-2(g)(5) are amended by the decisions in this document. The first item amended by this TD is the requirement that the organization's activities are 'exclusively religious'. Subsequent to litigation, the IRS met with representatives of various church operations to develop a less controversial and more objective standard for identifying an integrated auxiliary of a church. The IRS eliminated the 'exclusive religious' activity test and stated that the new definition eliminating the 'exclusive religious' test is consistent with Court holdings and legislative history. Also, the final regulations do not include the internal support requirement. Therefore...ORG, qualifies as an integrated auxiliary of a church."

As part of the audit process, ORG provided complete records for the audit year including statements for the following bank accounts: CO-3 (BO) Account # CO-4 (CO-4) Account #; and CO-5 Account #. In addition, ORG provided the general ledger from date of inception, May 20XX, along with other financial records. The older records were not requested for the examination, but were voluntarily provided.

Total gross deposits into ORG's accounts were as follows:

<u>Year</u>	<u>Total Deposits</u>	<u>Comments</u>
20XX	\$	From General Ledger

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 4 of 13
Name of taxpayer ORG	Tax Identification Number		Year/Period ended 12/31/XX & 12/31/XX

20XX	\$	From General Ledger
20XX	\$	CO-3
20XX	\$	CO-3
20XX	\$	CO-4 – not including interest earned
20XX	\$	CO-5 – not including interest earned
20XX	<u>-0-</u>	

\$ Total Deposits from 20XX through 20XX

The analyses of the financial records showed a substantial amount of the deposits were from DIR-1 or from one of his related companies. No other sources of deposits were identified. Some deposits were identified as transfers from one bank account to another account or loans repaid to ORG. The related companies from which payments came included:

CO-6	C-Corp	EIN
CO-7	S-Corp	EIN
CO-8	S-Corp	EIN
CO-9.	S-Corp	EIN

Based on their findings, SB/SE proposed the disallowance of the charitable contribution deduction claimed by DIR-1 and DIR-2 on their Form 1040 and claimed by the related entity, CO-6 for the years under examination which included tax years ending December 31, 20XX through December 31, 20XX. From the information provided by SB/SE, the specific amounts of funds claimed as charitable deductions to ORG were as followings:

Form 1040:	Tax Year Ending	Amount
	December 31, 20XX	\$
	December 31, 20XX	\$
	December 31, 20XX	0
	December 31, 20XX	<u>0</u>
	Total:	\$ ³

Form 1120: December 31, 20XX \$

The analyses of the financial records reflected the majority of the financial activity related to loans disbursed by ORG to either companies owned by DIR-1 or companies that DIR-1 had business dealing with.

This included the following:

³ Although this amount was contributed, the actual amount allowed as a charitable deduction on Form 1040 was limited to 50% of the Adjusted Gross Income (AGI)

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 5 of 13
Name of taxpayer ORG	Tax Identification Number		Year/Period ended 12/31/XX & 12/31/XX

Date	Check #	Loan to:	Amount
02/21/xx	BO –	CO-10	
02/21/xx	BO –	CO-10	
03/01/xx	BO –	CO-10	
03/04/xx	BO –	CO-10	
03/08/xx	BO –	CO-10	
03/15/xx	BO –	CO-10	
03/29/xx	BO –	CO-10	
04/03/xx	BO –	CO-10	
04/05/xx	BO –	CO-10	
04/15/xx	BO –	CO-10	
05/24/xx	BO –	CO-10	
08/02/xx	BO –	CO-8	
09/27/xx	BO –	CO-11	
09/27/xx	BO –	CO-11	
12/12/xx	BO –	CO-11	
12/12/xx	BO –	CO-11	
12/19/xx	BO –	CO-12	
01/16/xx	BO –	CO-11	
01/19/xx	BO –	CO-12	
02/20/xx	BO –	CO-12	
03/19/xx	BO –	CO-12	
12/23/xx	CO-4 –	CO-8	
12/23/xx	CO-4 –	CO-8	
		Total	_____ \$

CO-10 – DIR-1 stated⁴ this was a “sprinkler company” that went bankrupt. Although DIR-1 stated this was a bona fide loan and repayment was expected, the review of the available financial records did not reflect the payment of any interest when repayments were made. In addition, \$ of the repayment was not directly from CO-10, but was from CO-11. It was not possible to locate anyone with CO-10 to confirm the purpose of the payments.

CO-11 – DIR-1 stated⁵ this organization was not related to him (or to any other trustees/board members) as an individual or as a business owner, but this company was owned by IND-2. The company was for subcontract laborers who did drywall work for one of DIR-1’ companies.

Third party contact was made with IND-2, Jr. in January 20XX. IND-2 stated he was the former business partner of DIR-1. He and DIR-1 started in business together years ago (about 15 years ago) and a few years back IND-2 decided to break away from DIR-1 and start his own business. In discussing CO-11 and loans to/from ORG – IND-2 stated this was DIR-1’ company and the address reflected in the Secretary of State records, Address, City, State, was DIR-1’ address, not his address. IND-2 did not request any loans for this company since it is not his company and he had no knowledge how the books were kept. IND-2 stated he thought CO-11 was DIR-1’ payroll

⁴ Statement made during summons meeting held on October 1, 20XX. This meeting is discussed later on in the report.

⁵ Ibid

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 6 of 13
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/XX & 12/31/XX	

company that paid the workers for one of DIR-1' company. When informed the Secretary of State records reflected him (IND-2) as the\ registered agent and information provided to the Service indicated this could be a business owned by him, IND-2 stated it was not his business. He stated he may have signed some documents given to him from DIR-1 or DIR-5, but it was definitely not his business and he had no involvement in this entity.

CO-12/CO-12 Company – DIR-1 stated⁶ CO-12 was a paint contractor who did subcontractor work for one of DIR-1' business. DIR-1 explained that IND-1 was injured, in the hospital, and his spouse requested help since they were financially strapped. DIR-1 stated funds were deposited into IND-1's bank account and shortly after repaid. Third party contact was made to IND-4 and CO-12 owner of CO-12 Company, _____, State. Testimony was provided that their company is a paint company and they were a subcontractor for CO-7 Their company performed services at the CO-13 (a.k.a. CO-13) in City, State. IND-3 confirmed that her spouse, IND-5, suffered a head injury in late 20XX and was unable to accurately prepare billings so they requested and received a draw (advance) on funds due to them.

From IND-3's records, CO-12 received advances of \$ from the period 10/01/20XX through 05/07/20XX and subsequently billed CO-7 \$ for services rendered. Their billings/invoices were done by each unit (apartment) painted. IND-3 stated the advanced funds were supposed to be directly deposited from CO-7 into their account which was located at the same bank, however IND-3 stated they never saw the specific checks being deposited so they were not aware that some funds came from ORG.

Transfers between accounts included the following:

<u>Date</u>		<u>Amount</u>
02/27/xx	From CO-4	Transfer to CO-3
07/28/xx	From CO-4	Transfer to CO-3
06/10/xx	From CO-6	Transfer to CO-5
		<u>\$</u>

To determine the actual amount deposited for ORG's stated exempt purpose, the amount transferred between accounts and the amount identified as loan repayments had to be removed. This was calculated as follows:

Gross Deposits	\$
Less: Transfers between Accounts	
Loan Repayments \$	
 Deposits Available for Exempt Purpose	 \$

The following was confirmed as paid to CO-1 as charitable distributions:

⁶ Ibid

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 7 of 13
Name of taxpayer ORG	Tax Identification Number		Year/Period ended 12/31/XX & 12/31/XX

<u>Date</u>	<u>Amount</u>
03/26/xx	\$
06/02/xx	\$
03/09/xx	\$
	<u>\$.00</u>

The following administrative expenses were paid which relate to ORG's operation:

<u>Date</u>	<u>Name</u>	<u>Amount</u>
10/28/xx	CO-14	\$
05/15/xx	CO-14	\$
02/24/xx	CO-15	\$
05/21/xx	CO-14	\$
08/04/xx	CO-14	\$
		<u>\$</u>

Summary of review of the financial records - The lending of money to organizations/companies doing business with DIR-1 and the payment of administrative expenses were the main activities of ORG. There was a de minimus amount of funds, \$ given out for charitable purposes compared to total contributions of \$.

As part of the audit procedures, a third party contact was made with IND-6, Financial Secretary of CO-1, to confirm the purpose of the payment from ORG to CO-1. Revenue Agent Revenue Agent and Manager IND-4 Manager attended the meeting. IND-6 pulled CO-1's donation records back to 19XX and was able to verify a total of \$ in payments as shown above. Discussed with IND-6 her knowledge or other church members' knowledge of any other donations or planned donations from ORG. IND-6 stated she had been at the church for four (4) years. Prior to her, the financial secretary position was held by IND-7. The Minister of Education/Administration was IND-8 and he had been there for approximately six years. The Parent's Day Out program was run by IND-9 and she had been there since before the program began and had been there for about eleven (11) years. IND-6 stated she checked with all of the above members, as well as the trustee, IND-1, who sent the original response to the Internal Revenue Service (IRS) and none of them had any knowledge about ORG providing support or payments to CO-2, City, State. IND-6 stated IND-10 sent the letter to the IRS after he consulted with other leaders/ministers of CO-1.

Information Document Request (IDR) #004 was issued concerning foundation classification of ORG. A Form SS-4, Application for Employer Identification Number (EIN) was submitted to the IRS in May 20XX. This Form SS-4 indicated ORG was requesting an EIN as "Other nonprofit organization - Private Foundation" and reflected the principal activity of "Private Foundation". From the testimony provided and the records reviewed, the funding of ORG was from DIR-1 or from DIR-1' related companies. A written response received from ORG's Power of Attorney, DIR-5, stated: *"The ORG was originally formed as a private foundation on May 21, 20XX, as are all nonprofit organizations. ORG later became an integrated auxiliary of a church when it amended its*

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 8 of 13
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/XX & 12/31/XX	

Articles of Incorporation on November 26, 20XX. The organization then became a Section 501(c)(3) organization and had no filing requirement per U.S. Treasury Regulation 1.6033.

In conducting the examination, summonses were issued for an in-person interview with each of the trustees/directors. DIR-1 was the only person who was interviewed pursuant to the issued summons. Although documents provided for the audit, including the Articles of Incorporation, bylaws, and meeting minutes gave the appearance that other family members were involved in the operation of ORG, DIR-1 said the other board members had no involvement with the organization. Therefore a decision was made to not pursue summons enforcement against the other trustees/directors.

The meeting was held with DIR-1 on October 1, 20XX in response to IRS summons to obtain information and testimony with respect to the establishment and operation of ORG. Present during the meeting was DIR-1, his attorney ATTN, _____ Manager IND-4 Manager and Revenue Agent Revenue Agent. During that meeting the following information was obtained via oral testimony from DIR-1:

- Purpose of setting up ORG was to give money to help children of the church.
- DIR-1 stated ORG was set up by DIR-5 and the plan was to contribute the money to ORG and later make a large donation (\$) to the church for the children. He mentioned that he was trying to build up enough money in the account to do something like "build a building".
- When asked why ORG was considered to be an integrated auxiliary of CO-2, City, State, DIR-1 stated that DIR-5 said it had to be set-up that way, but DIR-1 was not told why it had to be set up that way. At the time ORG was set-up, he was attending church at CO-1, but does not attend CO-1 now. The leaders at the church changed in 20XX and recently changed again. DIR-1 stated he did not know anyone at the church now.
- In inquiring as to what discussion, if any, was held as to why Articles of Amendments were filed changing the name from "ORG" to "ORG, City, State", DIR-1 stated that DIR-5 told him that he (DIR-5) had made a mistake, but he could not recall any discussion on what the mistake was.
- DIR-1 stated that ORG was set-up and run the way DIR-5 verbally told him how to run it. DIR-5 did not provide any publications or documentation to help him operate ORG.
- DIR-1 acknowledged during the meeting that deposits into ORG came from him and his companies. He also acknowledged that no one else contributed/donated to ORG. Donations were not solicited from the public.
- When DIR-1 was asked about the involvement of the other board member (family members) in the financial operation of ORG, he stated they had no involvement.
- DIR-1 admitted the lending activities did not fulfill ORG's exempt purpose, but it did generate some interest income which could be used for ORG's exempt purpose. There were no loan agreements, but the loans were for short periods of time (i.e. one-day loans).

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 9 of 13
Name of taxpayer ORG	Tax Identification Number		Year/Period ended 12/31/XX & 12/31/XX

A summary of the meeting was prepared and forwarded to DIR-1, as president of ORG, with IDR #011 requesting that he review the statement and provide any changes/additions to the testimony provided during the meeting. This was also sent to ORG's Power of Attorney, POA. A response was requested by October 18, 20XX, but no response has been submitted.

LAW:

Section 501(a) of the Internal Revenue Code provides that an organization described in subsection (c) or (d)...shall be exempt from taxation...."

Section 501(c)(3) of the Internal Revenue Code provides that "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, ... no part of the net earnings of which inures to the benefit of any private shareholder or individual... are exempt from Federal income tax under this section".

Sections 508(a) and (b) of the Internal Revenue Code requires new organizations to apply for recognition of Section 501(c)(3) status and presumes all organizations are private foundations.

Section 508(c) of the Internal Revenue Code states "Subsection (a) and (b) shall not apply to...churches, their integrated auxiliaries, and conventions or associations of churches, or...

Section 6033(a)(1) of the Internal Revenue Code provides that every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe.

Section 6033(a)(2) of the Internal Revenue Code lists the major exceptions which includes "churches, their integrated auxiliaries, and conventions or associations of churches".

Federal Income Tax Regulation (Regulation) Section 1.501(c)(3)-1(a)(1) states: "In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such Code section. If an organization fails to meet either the organizational test or the operational test, it is not exempt." (emphasis added)

Regulations Section 1.501(c)(3)-1(b)(1) provides, "An organization is organized exclusively for one or more exempt purposes only if its articles of organization... (a) Limit the purposes of such organization to one or more exempt purposes; and (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

Regulation Section 1.501(c)(3)-1(b)(1) defines "articles of organization" to include the trust instrument, the corporate charter, the articles of association, or any other written instrument by which the organization is created.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 10 of 13
Name of taxpayer ORG	Tax Identification Number		Year/Period ended 12/31/XX & 12/31/XX

Regulation Section 1.501(c)(3)-1(b)(4) provides, "An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized."

Regulation Section 1.501(c)(3)-1(c) provides, "An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." (emphasis added)

Regulation Section 1.501(c)(3)-1(c)(2) provides, "An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words 'private shareholder or individual', see paragraph (c) of Sec. 1.501(a)-1." (emphasis added)

Regulation Section 1.501(a)-1(c) provides, "The words 'private shareholder or individual' in Section 501 refer to persons having a personal and private interest in the activities of the organization."

Regulation Section 1.501(c)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes "...unless it serves a public rather than a private interest. Thus ... it is *necessary for an organization to establish* that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." (emphasis added)

Regulation Section 1.6033-2(h)(1) states "the term *integrated auxiliary of a church* means an organization that is... (i) Described in both section 501(c)(3) and 509(a)(1), (2), or (3); (ii) Affiliated with a church or convention or associate of churches; and (iii) Internally supported."

Regulation Section 1.6033-2(h)(2) states "An organization is affiliated with a church...for paragraph (h)(1)(ii) of this section if:

- (i) The organization is covered by a group exemption letter issued under applicable administrative procedures...to a church or a convention or association of churches;
- (ii) The organization is operated, supervised, or controlled by or in connection with...a church or a convention or association of churches; or
- (iii) Relevant facts and circumstances show that it is so affiliated."

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 11 of 13
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/XX & 12/31/XX	

Regulation Section 1.6033-2(h)(3) pertains to the facts and circumstances and states "For purposes of paragraph (h)(2)(iii) of this section, relevant facts and circumstances that indicate an organization is affiliated with a church or a convention or association of churches include the following factors. However, the absence of one or more of the following factors does not necessarily preclude classification of an organization as being affiliated with a church or a convention or association of churches —

- (i) The organization's enabling instrument (corporate charter, trust instrument, articles of association, constitution or similar document) or by-laws affirm that the organization shares common religious doctrines, principles, disciplines, or practices with a church or a convention or association of churches;
- (ii) A church or a convention or association of churches has the authority to appoint or remove, or to control the appointment or removal of, at least one of the organization's officers or directors;
- (iii) The corporate name of the organization indicates an institutional relationship with a church or a convention or association of churches;
- (iv) The organization reports at least annually on its financial and general operations to a church or a convention or association of churches;
- (v) An institutional relationship between the organization and a church or a convention or association of churches is affirmed by the church, or convention or association of churches, or a designee thereof; and
- (vi) In the event of dissolution, the organization's assets are required to be distributed to a church or a convention or association of churches, or to an affiliate thereof within the meaning of this paragraph (h)."

Treasury Decision (TD) 8640 states "This document contains final regulations that exempt certain integrated auxiliaries of churches from filing information returns. These regulations incorporate the rules of Rev. Proc. 86-23 (1986-1 C.B. 564), into the regulations defining integrated auxiliary for purposes of determining what entities must file information returns. The new definition focuses on the sources of an organization's financial support *in addition to the nature of the organization's activities.*"

Section 12.01 of Rev. Proc. 2008-9, I.R.B. 2008-2, 258 (January 14, 2008) provides exempt status may be revoke or modified retroactively if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented.

GOVERNMENT'S POSITION:

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 12 of 13
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/XX & 12/31/XX	

The term "integrated auxiliary of a church" refers to a specific class of organizations that are related to a church or convention or association of churches, but are not such organizations themselves. A simple definition of an integrated auxiliary of a church would be an internally supported organization or entity that is affiliated with a church or a convention or association of churches as described in sections 501(c)(3) and 509(a)(1), (2), or (3). CO-1 did not support ORG and denied any affiliation with ORG.

The "facts and circumstances" section of Regulation Section 1.6033-2(h)(3) provides six generally accepted tests to indicate that the organization has satisfied the requirement of "affiliation" as required by the Internal Revenue Code and applicable Treasury Regulation. In general, if a reasonable number of these paragraphs are true, then the relevant facts and circumstances test under Regulation Section 1.6033-2(h)(2)(iii) is considered met and the organization is deemed to be affiliated with a church for the purpose of Regulation Section 1.6033-2(h)(1)(ii). In reviewing the tests, the only factor in ORG's favor is (iii) which states the "corporate name of the organization indicates an institutional relationship with a church...." Although, ORG stated in the official documents filed with the Secretary of State of State that it was "an Integrated Auxiliary of CO-2, City, State", ORG did not get permission from CO-1 to use their name and CO-1 denies any affiliation or knowledge about ORG. In addition, even though during the opening interview, DIR-5 stated ORG was an integrated auxiliary by "sharing the same beliefs" as CO-1, neither the Articles of Incorporation nor the bylaw reflected common religious doctrines, principles, disciplines, or practices with CO-1 as required by the Regulations.

Based on the definition and facts and circumstances of the Regulations, ORG does not qualify as an integrated auxiliary under Internal Revenue Code Section 501(a).

The approximate gross receipts deposited into ORG bank accounts in tax periods 20XX though 20XX totaled \$. The majority of the deposits were from DIR-1, his spouse DIR-2 and DIR-1' various business ventures. Charitable deductions under Section 170 of the Internal Revenue Code were claimed on the DIR-1 jointly filed Form 1040s as well as on the related business entities' Form 1120-S and Form 1120 for the periods ending December 31, 20XX through December 31, 20XX. DIR-1 himself acknowledged that ORG did not solicit nor did they receive any donations from the public.

As reflected under the Facts, some of the deposits were determined to be non-taxable transfers (\$) between accounts and non-taxable loan repayments (\$). The financial records indicate there 23 separate payments given out as loans totaling \$⁷.

The amount deposited and available to be used for ORG's stated exempt purpose was approximately \$. Of this amount, only \$ was confirmed as paid to CO-1. In addition, ORG had some minor operating expenses such as the paying of franchise fees and ordering of checks. The primary activity of ORG was the lending of funds to for-profit entities and to entities related to DIR-1 rather than the conduct of charitable activity. Loans made to the for-profit and other related

⁷ The difference between loans given out and loans repaid was de minimus and not pursued (\$ less \$ = \$)

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		08/12/20XX Page 13 of 13
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/XX & 12/31/XX	

entities owned by the President/Director DIR-1 constitute private benefit/inurement. At the end of tax year ending December 31, 20XX, loans were curtailed and outstanding loans were repaid.

Although ORG was organized as a non-profit corporation under the Non-Profit Corporation Laws of State and held itself out to be a tax-exempt organization under Sections 509(a) and 501(c)(3) of the Internal Revenue Code, ORG failed to operate for an exempt purpose.

- Loans were made to for-profit and related entities.
- Lending activity was the primary purpose compared to charitable activity.
- ORG did not receive approval from CO-1 to use their name and CO-1 did not know ORG held itself out to be an integrated auxiliary of the church.

Based on the above, ORG has failed to operate as an integrated auxiliary of the CO-1 and failed to meet the operational test of Section 501(c)(3) of the Internal Revenue Code

TAXPAYER'S POSITION:

From discussion held with Power of Attorney POA on August 12, 20XX taxpayer is in agreement with proposed revocation.

CONCLUSION:

- Based on the facts presented above, the Service proposes to revoke ORG's tax-exempt status effective May 21, 20XX, date of formation. Any contributions to ORG are no longer deductible as charitable contributions. Any contributions to this organization by those who were in part responsible for, or were aware of, the activities or deficiencies on the part of the organization that gave rise to loss of exempt status will not be allowed as a deduction effective the date of revocation.
- SBSE is making the appropriate adjustment on all tax returns required to be filed. Form 1120 for ORG is not required to be filed since there is little to no tax liability.
- ORG will be required to distribute all remaining assets for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or to the Federal government or State or Local government for a public purpose. Any charitable donation deductions disallowed SB/SE will not be considered assets of ORG. Since the ORG has agreed with the proposed revocation, distribution of assets can be made at any time at the discretion of ORG.
- When this proposed revocation becomes final, appropriate State officials will be advised of the action in accordance with Internal Revenue Code Section 6104(c) and applicable regulations.